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David Theiler

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID THEILER

Appeal 2009-004274
Application 10/689,610
Technology Center 3600

Decided: September 24, 2009

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-20 and 22. We have jurisdiction under 35 U.S.C. § 6(b) (2002). An Oral Hearing was held on September 9, 2009.

SUMMARY OF DECISION

We AFFIRM-IN-PART.

THE INVENTION

Appellant claims a system and method for a computer based workflow process management system relating to a development environment for creating software based workflow process management tools. (Specification 2: para. [0002])

Claims 1 and 22, reproduced below, are representative of the subject matter on appeal.

1. A method for creating a workflow process management application suitable for an organization, comprising:

(a) creating, on a computer system, a plurality of department objects, each of said department objects being associated with a respective department of said organization;

(b) creating, on said computer system, a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization;

(c) creating, on said computer system, a plurality of activity objects, each activity object being associated with at least one of said department objects and an activity of said organization; and

(d) after steps (a), (b), and (c), and responsive to a command, automatically generating, by said computer system, said workflow process management application from said department objects, resource objects, and activity objects;

wherein said workflow process management application, when executed by said computer, permits a user to:

enter, for each department, a workflow plan for said department,

generate worker assignments,

receive a workflow performed by departments of said organization, and

create a report comparing said workflow plan with said workflow performed;

said workflow process management application using said report to automatically generate subsequent worker assignments without further interaction with the user;

wherein said workflow plan comprises a plurality of standards, each one of said standards inter-relating at least one activity object with at least one resource object as a function of time and skill level.

22. A computer implemented method of performing a workflow process management application for an organization, said method comprising:

entering a user input workflow plan for a department, each department being associated with at least one department object, each department object being associated with at least one resource object, each resource object being further associated with a production resource of the organization, each department object also being associated with at least one activity object that is associated with an activity of the organization;

generating worker assignments;

creating a first report corresponding to planned workflow and expected needs;

inputting an indication of workflow performed;
creating a second report comparing the entered workflow plan with the input workflow performed; and
automatically generating subsequent worker assignments without further interaction with the user based on information in the second report.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Miller US 7,035,809 B2 Apr. 25, 2006

User's Guide to Microsoft Project, 1995 (hereinafter "MSProject")

The following rejection is before us for review.

The Examiner rejected claims 1-20 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Miller and MSProject.

ISSUE

Has Appellant shown that the Examiner erred in rejecting claims 1-20 and 22 as being unpatentable under 35 U.S.C. § 103(a) over Miller and MSProject on the grounds that a person with ordinary skill in the art would understand that the leveling system in MSProject would meet the claim requirement of "*responsive to a command, automatically generating, by said computer system, said workflow process management application from said department objects, resource objects, and activity objects; wherein said*

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workflow process management application, when executed by said computer, permits a user to:... automatically generate subsequent worker assignments without further interaction with the user.” (Emphasis added)

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

“[I]f the preamble merely state[s] a purpose or intended use and the remainder of the claim completely defines the invention independent of the preamble,” it does not constitute a limitation. *Lipscomb’s Walker on Patents*, 3rd Edition, Vol. 3, § 11.11 at p. 361 (citing *Marston v. J.C. Penney Co.*, 353 F.2d 976, 986 (4th Cir. 1965)); *see also Rowe v. Dror*, 112 F.3d

473, 478 (Fed. Cir. 1997); *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989) (An element initially recited in the preamble is thereafter fully incorporated into the body of the claim so as to breathe life and breath into it by setting forth the complete combination).

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. MSProject discloses that "[l]eveling simply delays certain tasks in your schedule until the resources assigned to them are no longer overallocated." (p. 65, ll. 24-25).
2. MSProject discloses that "it can't substitute a resource on an overallocated task or change the task's duration." (p. 69, ll. 15-16).
3. The Examiner found that Miller discloses initially generating worker assignments. (Answer 5).
4. Miller discloses that the CMM criteria generally relates "to the tasks and functions given to the various workers in a project." (col. 8, ll. 6-7).
5. Miller discloses changing an initial assignment only after "actual results from the development of the project do not match the plans...." (col. 8, ll. 39-40).

ANALYSIS

We affirm the rejection of claims 1-20 and reverse the rejection of claim 22.

Independent Claims 1, 8 and 12 require:

d) after steps (a), (b), and (c), and responsive to a command, automatically generating, by said computer system, said workflow process management application from said department objects, resource objects, and activity objects;

wherein said workflow process management application, when executed by said computer, permits a user to:...

create a report comparing said workflow plan with said workflow performed;

said workflow process management application using said report to automatically generate subsequent worker assignments without further interaction with the user....

The Examiner relies on MSProject to show limitation (d) stating that in "...Microsoft Project, any changes to parent tasks automatically generates changes to dependent tasks (i.e., subsequent assignments) without further interaction from the user...." (Answer 6).

Appellant, however, asserts that "MSProject is capable only of pushing back in time existing tasks, not generating new subsequent tasks," and thus cannot meet the claim limitations. (Appeal Br. 8).

We agree with Appellant because the MSProject system uses a leveling feature which simply delays certain tasks in a schedule until the resources assigned to them are no longer overallocated, and cannot substitute a resource on an overallocated task, or change the task's duration. (FF 1-2).

Therefore, simply shifting deadlines out from an earlier time does not constitute generating subsequent worker assignments because the assignments stay as assigned, thereby failing to meet the required claim language.

Since claims 2-7 and 15-20, 9-11, and 13, 14 depend from claims 1, 8 and 12, respectively, and since we cannot sustain the rejection of claims 1, 8 and 12, the rejection of the dependent claims likewise cannot be sustained.

Claim 22

Claim 22 does not recite the limitation (d) calling for the step responsive to a command, automatically generating, by said computer system, said workflow process management application to create a report comparing said workflow plan with said workflow performed; said workflow process management application using said report to automatically generate subsequent worker assignments without further interaction with the user. Thus, we do not credit claim 22 with requiring a computer to effect the step of automatically generating subsequent worker assignments without further interaction with the user.

First, although a computer is recited in the preamble, it is not thereafter incorporated into the body of the claim, and thus does not constitute a limitation. *See e.g.*, Lipscomb, p. 361. Second, nothing in claim 22 prevents the step of automatically generating subsequent worker assignments from using the same assignments which were established previously in the claim to be used subsequently. The Examiner found that

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Miller discloses initially generating worker assignments. (FF 3). Appellant does not challenge this and we confirm that Miller in fact discloses this feature. That is, Miller discloses changing an initial assignment only after “actual results from the development of the project do not match the plans....” (FF 5). Therefore, if the plans match in Miller there would be no change, and the same assignments would automatically be used in a post comparison mode. Accordingly, based on our interpretation of claim 22, we find that Miller meets the limitations of claim 22.

CONCLUSIONS OF LAW

We conclude the Appellant has shown that the Examiner erred in rejecting claims 1-20.

We conclude the Appellant has not shown that the Examiner erred in rejecting claim 22.

DECISION

The rejection of claims 1-20 is reversed. The rejection of claim 22 is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

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AFFIRMED-IN-PART

mls

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